

### **REMARKS**

Upon entry of this Response, claims 1, 4-9, 11-16, 18-20, and 27-28 remain pending in the present patent application.

#### **Response to Rejection of Claims under 35 U.S.C. § 103(a)**

Claims 1, 4, 6, 7, 9, 11, 13, 15, 16, 18, 20, 27 and 28 have been rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over U.S. Publication 20020073304 filed by Marsh et al (hereafter "*Marsh*") and further in view of U.S. Patent 6,516,346 (hereafter "*Asco*") and U.S. Patent 6,742,025 to Jennery et al (hereafter "*Jennery*") and further in view of U.S. Patent 7,080,134 to Doherty et al. (hereafter "*Doherty*"). A prima facie case of obviousness is established only when the prior art teaches or suggests all of the elements of the claims. MPEP §2143.03, In re Rijckaert, 9 F.3d 1531, 28 U.S.P.Q2d 1955, 1956 (Fed. Cir. 1993).

Claims 5, 12 and 19 have been rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over *Marsh*, *Asco*, *Jennery* and *Doherty*, and further in view of U.S. Patent 6,594,757 issued to Martinez (hereafter "*Martinez*"). A prima facie case of obviousness is established only when the prior art teaches or suggests all of the elements of the claims. MPEP §2143.03, In re Rijckaert, 9 F.3d 1531, 28 U.S.P.Q2d 1955, 1956 (Fed. Cir. 1993).

Claims 8 and 14 have been rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over *Marsh*, *Asco*, *Jennery* and *Doherty*, and further in view of U.S. Patent 6,009,524 issued to Olarig (hereafter "*Olarig*"). A prima facie case of obviousness is established only when the prior art teaches or suggests all of the elements of the claims. MPEP §2143.03, In re Rijckaert, 9 F.3d 1531, 28 U.S.P.Q2d 1955, 1956 (Fed. Cir. 1993).

a. Claim 1

As provided in independent claim 1, Applicant claims:

A computer system, comprising:  
a central processor unit (CPU);  
a programmable read only memory (ROM) coupled to said CPU,  
said ROM containing a digital image;  
wherein said CPU programs its ROM during a single system  
initialization by the CPU, wherein the single system initialization further  
comprises a booting of said system;  
a connection to a network and wherein, during the single system  
initialization, said system sends a message to a server coupled to the  
network to determine whether an upgraded image is available for said  
ROM; and  
***wherein, during the single system initialization, said system  
receives an upgraded image and flashes said ROM with the  
upgraded image before loading any portion of the operating system  
in a random access memory associated with the CPU if the upgraded  
image is available for said ROM.***

(Emphasis added).

Applicants respectfully submit that independent claim 1 is allowable for at least the reason that *Marsh* in view of *Asco* in further view of *Jennery* in further view of *Doherty* does not disclose, teach, or suggest all of the claimed features above, such as “wherein, during the single system initialization, said system receives an upgraded image and flashes said ROM with the upgraded image before loading any portion of the operating system in a random access memory associated with the CPU if the upgraded image is available for said ROM,” as recited and emphasized above.

For example, claim 1 recites “wherein said CPU programs its ROM during a single system initialization by the CPU.” Further, “during the single system initialization, said system sends a message to a server coupled to the network to determine whether an upgraded image is available for said ROM.” Additionally, “during the single system initialization, said system receives an upgraded image and flashes said ROM with the upgraded image before loading any portion of the operating system in a random access memory associated with the CPU if the upgraded image is available for said ROM.” Therefore, during a single system initialization, claim 1 recites that a server is checked for an upgraded image and a ROM is flashed with the available upgraded image before

loading any portion of the operating system in random access memory. This necessarily precludes loading an operating system, receiving an upgraded image, flashing the ROM, and then reloading the operating system to restart an initialization procedure, which is taught by the proposed combination.

In particular, *Marsh* describes that an operating system is booted in order to facilitate the download of upgraded firmware and the computer system is then rebooted in order to allow for the firmware to be installed on the ROM. As such, *Marsh* does not show or suggest the concept of flashing the ROM with an upgraded image before the loading of any portion of the operating system in RAM.

With respect to the final Office Action statement that “the plain language of the claim does not require or equate to having never loaded an operating system,” Applicant submits that the present claim language equates to having never loaded an operating system during a single system initialization until the upgraded image is received and flashed in ROM, which is not disclosed by the cited combination. See page 3 (Emphasis removed).

With regard to *Doherty*, the final Office Action states that *Doherty* teaches downloading software from a remote location over the network before loading an operating system. Page 4. The final Office Action also points to the passage at col. 1, lines 22-35 which states that “[i]n a typical management environment, a client may include a network card that is configured to communicate with a remote server. At a boot-up, but before loading an operating system into main memory, a client may contact a management server and request instructions therefrom. Such instructions may cause the client to boot to disk, reformat a disk or disks of the client, or install a predetermined OS on the client.” It is noted that each of these acts corresponds to actions performed on a local storage medium and not ROM. In particular, Applicant submits that *Doherty* teaches that a client 201 attempts to boot to a local computer readable medium, “such as a hard drive of client,” or attempts to boot to a network 270. Col. 4, lines 25-27 and col. 6, lines 61-64. If the client boots to a network, the client may install an operating system on the local medium of the client, “such as a local hard drive, a floppy disk, or a CD-ROM.” See col. 2, lines 7-8 and col. 8, lines 21-24. Therefore, *Doherty* does not remedy the deficiencies of the *Marsh* reference, such as “during the system

initialization, said system sends a message to a server coupled to the network to determine whether an upgraded image is available for said ROM” and “during the single system initialization, said system receives an upgraded image and flashes said ROM with the upgraded image before loading any portion of the operating system in a random access memory associated with the CPU if the upgraded image is available for said ROM,” as recited in claim 1. As such, *Doherty* fails to disclose that an upgraded image is received and flashed to ROM. Rather, *Doherty* describes that a client either boots to a local medium, boots to a network, or installs a new operating system to the local medium and then boots the new operating system. Accordingly, if *Doherty* is limited to teaching receiving instructions before an operating system is loaded, then *Doherty* is not legally adequate to cure the deficiencies of the *Marsh* reference.

Further, *Asco* and *Jennery* also fail to teach or suggest that an upgraded image is received and flashed to ROM before loading any portion of an operating system and therefore do not cure the deficiencies of the *Marsh* and *Doherty* references.

As such, a *prima facie* case establishing an obviousness rejection by the proposed combination of *Marsh* in view of *Asco* in further view of *Jennery* in further view of *Doherty* has not been made, and the rejection of claim 1 should be withdrawn for at least the aforementioned reasons.

In the Advisory Action, the Examiner states that “applicant does not make the express argument that *Marsh* does not teach flashing a ROM *during initialization*.” On this point, the Examiner has provided a construction of the term “initialization” which may include multiple initializations. Accordingly, the claim has been amended to recite “a single system initialization.” Accordingly, Applicants submit that *Marsh* does not teach flashing a ROM during a single system initialization. Rather, *Marsh* describes that a computer system is booted and subsequently a firmware install patch is pushed to a computer system and stored on a boot disk. Upon the next boot of the application, the computer system selects an install application which may be executed. Then, subsequent boot operations may be needed to complete the firmware upgrade.

In the Advisory Action, the Examiner states that *Doherty* has been applied in the rejection to teach the limitation “before the loading of any portion of the operating system in RAM.” Page 3. The Examiner also states that “it would have been obvious

. . . to user Marsh's teaching of updating software by flashing the ROM upon startup . . . with Doherty's teaching of receiving the instructions to do so during start up as well." Page 3. On this point, Applicants submit that *Marsh* does not teach the upgrading of a ROM image during a single system initialization, as previously stated. Further, *Doherty* does not disclose that instructions are received during system initialization to flash a ROM with an upgraded image. Accordingly, the proposed combination would not produce the claimed subject matter.

Withdrawal of the rejection is respectfully requested.

b. Claims 4-8 and 28

Dependent claims 4-8 and 28 (which depend from independent claim 1) are allowable as a matter of law for at least the reason that the dependent claims 4-8 and 28 contain all the features of allowable independent claim 1. Further, the cited art of *Martinez* and *Olarig* fails to cure the deficiencies of the combination of *Marsh* in view of *Asco* in further view of *Jennery* in further view of *Doherty*.

Additionally and notwithstanding the foregoing reasons for allowability of claims 4-8 and 28, these claims recite further features and/or combinations of features (as is apparent by examination of the claims themselves) that are patentably distinct from the cited art of record. Hence, there are other reasons why these dependent claims are allowable.

Accordingly, the rejections to these claims should be withdrawn.

c. Claim 9

As provided in independent claim 9, Applicant claims:

A method of upgrading an image on a ROM, comprising:  
performing a single system initialization of a system containing the ROM, wherein the single system initialization further comprises a booting of the system where the system further comprises a central processing unit (CPU);  
while performing said single system initialization, transmitting a message to a server to determine whether an upgraded image exists for the ROM; and

***receiving an upgraded image and flashing the ROM during said single system initialization before loading any portion of the operating system in a random access memory associated with the CPU.***

(Emphasis added).

Applicants respectfully submit that independent claim 9 is allowable for at least the reason that *Marsh* in view of *Asco* in further view of *Jennery* in further view of *Doherty* does not disclose, teach, or suggest all of the claimed features above, such as “receiving an upgraded image and flashing the ROM during said single system initialization before loading any portion of the operating system in a random access memory associated with the CPU,” as recited and emphasized above.

For example, claim 9 recites “performing a single system initialization of a system containing the ROM, wherein the single system initialization further comprises a booting of the system where the system further comprises a central processing unit (CPU); while performing said single system initialization, transmitting a message to a server to determine whether an upgraded image exists for the ROM; and receiving an upgraded image and flashing the ROM during said single system initialization before loading any portion of the operating system in a random access memory associated with the CPU.” Therefore, claim 9 recites that a determination is made as to whether an upgraded image exists for a ROM during a single system initialization and a ROM is flashed with the available upgraded image before loading any portion of the operating system in random access memory during the single system initialization. This necessarily precludes loading an operating system, receiving an upgraded image, flashing the ROM, and then reloading the operating system to restart an initialization procedure, which is taught by the proposed combination.

In particular, *Marsh* describes that an operating system is booted in order to facilitate the download of upgraded firmware and the computer system is then rebooted in order to allow for the firmware to be installed on the ROM. As such, *Marsh* does not show or suggest the concept of flashing the ROM with an upgraded image before the loading of any portion of the operating system in RAM.

With respect to the final Office Action statement that “the plain language of the claim does not require or equate to having never loaded an operating system,” Applicant submits that the present claim language equates to having never loaded an operating system during a single system initialization until the upgraded image is received and flashed in ROM, which is not disclosed by the cited combination. See page 3 (Emphasis removed).

With regard to *Doherty*, the final Office Action states that *Doherty* teaches downloading software from a remote location over the network before loading an operating system. Page 4. The final Office Action also points to the passage at col. 1, lines 22-35 which states that “[i]n a typical management environment, a client may include a network card that is configured to communicate with a remote server. At a boot-up, but before loading an operating system into main memory, a client may contact a management server and request instructions therefrom. Such instructions may cause the client to boot to disk, reformat a disk or disks of the client, or install a predetermined OS on the client.” It is noted that each of these acts corresponds to actions performed on a local storage medium and not ROM. In particular, Applicant submits that *Doherty* teaches that a client 201 attempts to boot to a local computer readable medium, “such as a hard drive of client,” or attempts to boot to a network 270. Col. 4, lines 25-27 and col. 6, lines 61-64. If the client boots to a network, the client may install an operating system on the local medium of the client, “such as a local hard drive, a floppy disk, or a CD-ROM.” See col. 2, lines 7-8 and col. 8, lines 21-24. Therefore, *Doherty* does not remedy the deficiencies of the *Marsh* reference, such as “receiving an upgraded image and flashing the ROM during said single system initialization before loading any portion of the operating system in a random access memory associated with the CPU,” as recited in claim 9. As such, *Doherty* fails to disclose that an upgraded image is received and flashed to ROM. Rather, *Doherty* describes that a client either boots to a local medium, boots to a network, or installs a new operating system to the local medium and then boots the new operating system. Accordingly, if *Doherty* is limited to teaching receiving instructions before an operating system is loaded, then *Doherty* is not legally adequate to cure the deficiencies of the *Marsh* reference.

Further, *Asco* and *Jennery* also fail to teach or suggest that an upgraded image is received and flashed to ROM before loading any portion of an operating system and therefore do not cure the deficiencies of the *Marsh* and *Doherty* references.

As such, a *prima facie* case establishing an obviousness rejection by the proposed combination of *Marsh* in view of *Asco* in further view of *Jennery* in further view of *Doherty* has not been made, and the rejection of claim 9 should be withdrawn for at least the aforementioned reasons.

In the Advisory Action, the Examiner states that “applicant does not make the express argument that *Marsh* does not teach flashing a ROM *during initialization*.” On this point, the Examiner has provided a construction of the term “initialization” which may include multiple initializations. Accordingly, the claim has been amended to recite “a single system initialization.” Accordingly, Applicants submit that *Marsh* does not teach flashing a ROM during a single system initialization. Rather, *Marsh* describes that a computer system is booted and subsequently a firmware install patch is pushed to a computer system and stored on a boot disk. Upon the next boot of the application, the computer system selects an install application which may be executed. Then, subsequent boot operations may be needed to complete the firmware upgrade.

In the Advisory Action, the Examiner states that *Doherty* has been applied in the rejection to teach the limitation “before the loading of any portion of the operating system in RAM.” Page 3. The Examiner also states that “it would have been obvious . . . to user *Marsh*’s teaching of updating software by flashing the ROM upon startup . . . with *Doherty*’s teaching of receiving the instructions to do so during start up as well.” Page 3. On this point, Applicants submit that *Marsh* does not teach the upgrading of a ROM image during a single initialization, as previously stated. Further, *Doherty* does not disclose that instructions are received during system initialization to flash a ROM with an upgraded image. Accordingly, the proposed combination would not produce the claimed subject matter.

Withdrawal of the rejection is respectfully requested.



d. Claims 11-15

Dependent claims 11-15 (which depend from independent claim 9) are allowable as a matter of law for at least the reason that the dependent claims 11-15 contain all the features of allowable independent claim 9. Further, the cited art of *Martinez* and *Olarig* fails to cure the deficiencies of the combination of *Marsh* in view of *Asco* in further view of *Jennery* in further view of *Doherty*.

Additionally and notwithstanding the foregoing reasons for allowability of claims 11-15, these claims recite further features and/or combinations of features (as is apparent by examination of the claims themselves) that are patentably distinct from the cited art of record. Hence, there are other reasons why these dependent claims are allowable.

Accordingly, the rejections to these claims should be withdrawn.

e. Claim 16

As provided in independent claim 16, Applicant claims:

A ROM image system, comprising:  
a server;  
a database accessible by said server, said database storing  
information regarding ROM images; and

***wherein said server receives a message from a computer that is currently undergoing a single system initialization to determine if an upgrade exists for the computer's ROM image, uses said information to determine if an upgrade is available for the computer's ROM image and transmits a response to the computer indicating whether an upgrade is available during the single system initialization of the computer, wherein said response includes an upgraded ROM image, and wherein the upgraded ROM image is installed during the single system initialization of the computer before loading any portion of the operating system in a random access memory associated with the computer.***

(Emphasis added).

Applicants respectfully submit that independent claim 16 is allowable for at least the reason that *Marsh* in view of *Asco* in further view of *Jennery* in further view of *Doherty* does not disclose, teach, or suggest all of the claimed features above, such as

“wherein said server receives a message from a computer that is currently undergoing a single system initialization to determine if an upgrade exists for the computer's ROM image, uses said information to determine if an upgrade is available for the computer's ROM image and transmits a response to the computer indicating whether an upgrade is available during the single system initialization of the computer, wherein said response includes an upgraded ROM image, and wherein the upgraded ROM image is installed during the single system initialization of the computer before loading any portion of the operating system in a random access memory associated with the computer,” as recited and emphasized above.

For example, claim 16 recites “wherein said server receives a message from a computer that is currently undergoing a single system initialization to determine if an upgrade exists for the computer's ROM image, uses said information to determine if an upgrade is available for the computer's ROM image and transmits a response to the computer indicating whether an upgrade is available during the single system initialization of the computer, wherein said response includes an upgraded ROM image, and wherein the upgraded ROM image is installed during the single system initialization of the computer before loading any portion of the operating system in a random access memory associated with the computer.” Therefore, claim 16 recites that a determination is made as to whether an upgraded image exists for a ROM during a single system initialization and a ROM is flashed with the available upgraded image before loading any portion of the operating system in random access memory during the single system initialization. This necessarily precludes loading an operating system, receiving an upgraded image, flashing the ROM, and then reloading the operating system to restart an initialization procedure, which is taught by the proposed combination.

In particular, *Marsh* describes that an operating system is booted in order to facilitate the download of upgraded firmware and the computer system is then rebooted in order to allow for the firmware to be installed on the ROM. As such, *Marsh* does not show or suggest the concept of flashing the ROM with an upgraded image before the loading of any portion of the operating system in RAM.

With respect to the final Office Action statement that “the plain language of the claim does not require or equate to having never loaded an operating system,”

Applicant submits that the present claim language equates to having never loaded an operating system during a single system initialization until the upgraded image is received and flashed in ROM, which is not disclosed by the cited combination. See page 3 (Emphasis removed).

With regard to *Doherty*, the final Office Action states that *Doherty* teaches downloading software from a remote location over the network before loading an operating system. Page 4. The final Office Action also points to the passage at col. 1, lines 22-35 which states that “[i]n a typical management environment, a client may include a network card that is configured to communicate with a remote server. At a boot-up, but before loading an operating system into main memory, a client may contact a management server and request instructions therefrom. Such instructions may cause the client to boot to disk, reformat a disk or disks of the client, or install a predetermined OS on the client.” It is noted that each of these acts corresponds to actions performed on a local storage medium and not ROM. In particular, Applicant submits that *Doherty* teaches that a client 201 attempts to boot to a local computer readable medium, “such as a hard drive of client,” or attempts to boot to a network 270. Col. 4, lines 25-27 and col. 6, lines 61-64. If the client boots to a network, the client may install an operating system on the local medium of the client, “such as a local hard drive, a floppy disk, or a CD-ROM.” See col. 2, lines 7-8 and col. 8, lines 21-24. Therefore, *Doherty* does not remedy the deficiencies of the *Marsh* reference, such as “wherein said server receives a message from a computer that is currently undergoing a single system initialization to determine if an upgrade exists for the computer's ROM image, uses said information to determine if an upgrade is available for the computer's ROM image and transmits a response to the computer indicating whether an upgrade is available during the single system initialization of the computer, wherein said response includes an upgraded ROM image, and wherein the upgraded ROM image is installed during the single system initialization of the computer before loading any portion of the operating system in a random access memory associated with the computer,” as recited in claim 16. As such, *Doherty* fails to disclose that an upgraded image is received and flashed to ROM. Rather, *Doherty* describes that a client either boots to a local medium, boots to a network, or installs a new operating system to the local medium and then boots the new

operating system. Accordingly, if *Doherty* is limited to teaching receiving instructions before an operating system is loaded, then *Doherty* is not legally adequate to cure the deficiencies of the *Marsh* reference.

Further, *Asco* and *Jennery* also fail to teach or suggest that an upgraded image is received and flashed to ROM before loading any portion of an operating system and therefore do not cure the deficiencies of the *Marsh* and *Doherty* references.

As such, a *prima facie* case establishing an obviousness rejection by the proposed combination of *Marsh* in view of *Asco* in further view of *Jennery* in further view of *Doherty* has not been made, and the rejection of claim 16 should be withdrawn for at least the aforementioned reasons.

In the Advisory Action, the Examiner states that “applicant does not make the express argument that *Marsh* does not teach flashing a ROM *during initialization*.” On this point, the Examiner has provided a construction of the term “initialization” which may include multiple initializations. Accordingly, the claim has been amended to recite “a single system initialization.” Accordingly, Applicants submit that *Marsh* does not teach flashing a ROM during a single system initialization. Rather, *Marsh* describes that a computer system is booted and subsequently a firmware install patch is pushed to a computer system and stored on a boot disk. Upon the next boot of the application, the computer system selects an install application which may be executed. Then, subsequent boot operations may be needed to complete the firmware upgrade.

In the Advisory Action, the Examiner states that *Doherty* has been applied in the rejection to teach the limitation “before the loading of any portion of the operating system in RAM.” Page 3. The Examiner also states that “it would have been obvious . . . to user *Marsh*’s teaching of updating software by flashing the ROM upon startup . . . with *Doherty*’s teaching of receiving the instructions to do so during start up as well.” Page 3. On this point, Applicants submit that *Marsh* does not teach the upgrading of a ROM image during a single initialization, as previously stated. Further, *Doherty* does not disclose that instructions are received during system initialization to flash a ROM with an upgraded image. Accordingly, the proposed combination would not produce the claimed subject matter.

Withdrawal of the rejection is respectfully requested.

f. Claims 18-20

Dependent claims 18-20 (which depend from independent claim 16) are allowable as a matter of law for at least the reason that the dependent claims 18-20 contain all the features of allowable independent claim 16. Further, the cited art of *Martinez* fails to cure the deficiencies of the combination of *Marsh* in view of *Asco* in further view of *Jennery* in further view of *Doherty*.

Additionally and notwithstanding the foregoing reasons for allowability of claims 18-20, these claims recite further features and/or combinations of features (as is apparent by examination of the claims themselves) that are patentably distinct from the cited art of record. Hence, there are other reasons why these dependent claims are allowable.

Accordingly, the rejections to these claims should be withdrawn.

g. Claim 27

As provided in independent claim 27, Applicant claims:

An enterprise computing system, comprising:  
a plurality of computers, each having a programmable ROM;  
a proxy enterprise ROM server to which the computers couple, said proxy enterprise ROM server communicating with a network external to the enterprise; and

***wherein said proxy enterprise ROM server includes a first storage area for an untested ROM image update, and a second storage area for an approved ROM image update, and at least one of said computers, during its single initialization and before loading any portion of an operating system in a random access memory associated with the at least one of said computers, checks the second storage area for the approved ROM image update to be installed in the at least one of said computers, wherein the approved ROM image update comprises the untested ROM image update that has undergone at least one suitable approval test.***

(Emphasis added).

Applicants respectfully submit that independent claim 27 is allowable for at least the reason that *Marsh* in view of *Asco* in further view of *Jennery* in further view of *Doherty* does not disclose, teach, or suggest all of the claimed features above, such as

“wherein said proxy enterprise ROM server includes a first storage area for an untested ROM image update, and a second storage area for an approved ROM image update, and at least one of said computers, during its single initialization and before loading any portion of an operating system in a random access memory associated with the at least one of said computers, checks the second storage area for the approved ROM image update to be installed in the at least one of said computers, wherein the approved ROM image update comprises the untested ROM image update that has undergone at least one suitable approval test,” as recited and emphasized above.

For example, claim 27 recites “wherein said proxy enterprise ROM server includes a first storage area for an untested ROM image update, and a second storage area for an approved ROM image update, and at least one of said computers, during its single initialization and before loading any portion of an operating system in a random access memory associated with the at least one of said computers, checks the second storage area for the approved ROM image update to be installed in the at least one of said computers, wherein the approved ROM image update comprises the untested ROM image update that has undergone at least one suitable approval test.” This necessarily precludes loading an operating system, receiving an upgraded image, flashing the ROM, and then reloading the operating system to restart an initialization procedure, which is taught by the proposed combination.

In particular, *Marsh* describes that an operating system is booted in order to facilitate the download of upgraded firmware and the computer system is then rebooted in order to allow for the firmware to be installed on the ROM. As such, *Marsh* does not show or suggest the concept of flashing the ROM with an upgraded image before the loading of any portion of the operating system in RAM.

With respect to the final Office Action statement that “the plain language of the claim does not require or equate to having never loaded an operating system,” Applicant submits that the present claim language equates to having never loaded an operating system during a single system initialization until the upgraded image is received and flashed in ROM, which is not disclosed by the cited combination. See page 3 (Emphasis removed).

With regard to *Doherty*, the final Office Action states that *Doherty* teaches downloading software from a remote location over the network before loading an operating system. Page 4. The final Office Action also points to the passage at col. 1, lines 22-35 which states that “[i]n a typical management environment, a client may include a network card that is configured to communicate with a remote server. At a boot-up, but before loading an operating system into main memory, a client may contact a management server and request instructions therefrom. Such instructions may cause the client to boot to disk, reformat a disk or disks of the client, or install a predetermined OS on the client.” It is noted that each of these acts corresponds to actions performed on a local storage medium and not ROM. In particular, Applicant submits that *Doherty* teaches that a client 201 attempts to boot to a local computer readable medium, “such as a hard drive of client,” or attempts to boot to a network 270. Col. 4, lines 25-27 and col. 6, lines 61-64. If the client boots to a network, the client may install an operating system on the local medium of the client, “such as a local hard drive, a floppy disk, or a CD-ROM.” See col. 2, lines 7-8 and col. 8, lines 21-24. Therefore, *Doherty* does not remedy the deficiencies of the *Marsh* reference, such as “wherein said proxy enterprise ROM server includes a first storage area for an untested ROM image update, and a second storage area for an approved ROM image update, and at least one of said computers, during its single initialization and before loading any portion of an operating system in a random access memory associated with the at least one of said computers, checks the second storage area for the approved ROM image update to be installed in the at least one of said computers, wherein the approved ROM image update comprises the untested ROM image update that has undergone at least one suitable approval test,” as recited in claim 27. As such, *Doherty* fails to disclose that an upgraded image is received and flashed to ROM. Rather, *Doherty* describes that a client either boots to a local medium, boots to a network, or installs a new operating system to the local medium and then boots the new operating system. Accordingly, if *Doherty* is limited to teaching receiving instructions before an operating system is loaded, then *Doherty* is not legally adequate to cure the deficiencies of the *Marsh* reference.

Further, *Asco* and *Jennery* also fail to teach or suggest that an upgraded image is received and flashed to ROM before loading any portion of an operating system and therefore do not cure the deficiencies of the *Marsh* and *Doherty* references.

As such, a *prima facie* case establishing an obviousness rejection by the proposed combination of *Marsh* in view of *Asco* in further view of *Jennery* in further view of *Doherty* has not been made, and the rejection of claim 27 should be withdrawn for at least the aforementioned reasons.

In the Advisory Action, the Examiner states that “applicant does not make the express argument that *Marsh* does not teach flashing a ROM *during initialization*.” On this point, the Examiner has provided a construction of the term “initialization” which may include multiple initializations. Accordingly, the claim has been amended to recite “a single system initialization.” Accordingly, Applicants submit that *Marsh* does not teach flashing a ROM during a single system initialization. Rather, *Marsh* describes that a computer system is booted and subsequently a firmware install patch is pushed to a computer system and stored on a boot disk. Upon the next boot of the application, the computer system selects an install application which may be executed. Then, subsequent boot operations may be needed to complete the firmware upgrade.

In the Advisory Action, the Examiner states that *Doherty* has been applied in the rejection to teach the limitation “before the loading of any portion of the operating system in RAM.” Page 3. The Examiner also states that “it would have been obvious . . . to use *Marsh*’s teaching of updating software by flashing the ROM upon startup . . . with *Doherty*’s teaching of receiving the instructions to do so during start up as well.” Page 3. On this point, Applicants submit that *Marsh* does not teach the upgrading of a ROM image during a single initialization, as previously stated. Further, *Doherty* does not disclose that instructions are received during system initialization to flash a ROM with an upgraded image. Accordingly, the proposed combination would not produce the claimed subject matter.

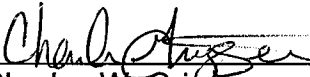
Withdrawal of the rejection is respectfully requested.



### **CONCLUSION**

It is requested that all outstanding objections and rejections be withdrawn and that this application and all presently pending claims be allowed to issue. If the Examiner has any questions or comments regarding this Response, the Examiner is encouraged to telephone the undersigned counsel of Applicant.

Respectfully submitted,

  
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Charles W. Griggers  
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